



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

NOV 19 2003

Commissioner Bradley M. Campbell
New Jersey Department of Environmental Protection
401 East State Street, 7th Floor
Trenton, New Jersey 08625

DEC 4

Dear Commissioner Campbell:

Thank you for your letter dated October 10, 2003 on the Lower Passaic River Project – Draft Memorandum of Agreement (MOA), that I received on October 20, 2003. While our staffs can negotiate the details of the MOA by teleconference, I would like to confirm certain overarching policy issues with you.

Role of Natural Resource Damages in the CERCLA-WRDA Study MOA

The draft MOA that we sent to your office on June 24, 2003 was conceived as a management tool for the signatory agencies to use to conduct an efficient study of the Lower Passaic River under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and the Water Resources Development Act (WRDA). Those signatory agencies were intended to be U.S. Environmental Protection Agency, Region 2 (EPA R2), U.S. Army Corps of Engineers, New York District (USACE-NYD), New Jersey Department of Transportation, Office of Maritime Resources (NJDOT-OMR), and New Jersey Department of Environmental Protection (NJDEP). During a meeting on August 14, 2003, attended by representatives of EPA R2, USACE-NYD, NJDOT-OMR, NJDEP Office of Natural and Historic Resources, U.S. Fish and Wildlife Service (USFWS), and the National Oceanic and Atmospheric Administration (NOAA), the execution of a separate MOA among the agencies implementing the CERCLA-WRDA study and the Natural Resource Trustee agencies was discussed. One of the NOAA representatives is currently drafting that MOA.

As expressed in your October 10, 2003 letter and during an October 30, 2003 conference call between Evan Van Hook and George Pavlou, Natural Resource Damages (NRD) are of such importance to NJDEP that the CERCLA-WRDA study MOA cannot be signed without prior agreement on NRD issues. If that is the case, then the approach of negotiating separate MOAs, as described above, may not be productive. I suggest that we move directly to a single MOA among the agencies implementing the CERCLA-WRDA study and the Trustee agencies. If you agree with this new approach, we will circulate a proposed MOA for the review of all proposed signatories and will request that the federal Trustees (USFWS and NOAA) participate in the teleconference negotiations. I also request that the Office of Natural and Historic Resources take an active role in the negotiations, as their absence at the initial October 30, 2003 conference call led to an inability to discuss the NRD issues specified in your October 10, 2003 letter.

Inclusion of Local Sponsors Other Than NJDOT-OMR in the MOA

In your October 10, 2003 letter, you requested that the MOA be expanded to include the Passaic Valley Sewerage Commission (PVSC) as an additional local sponsor. To date, I am not aware that USACE-NYD has any agreement with PVSC that would confirm their establishment as a local sponsor. Until such time, EPA R2, USACE-NYD, and NJDOT-OMR are hoping to expedite the signing of the MOA to streamline our participation in the Lower Passaic River Restoration Project study and to demonstrate a visible commitment among the agencies to work together on the study. I urge you to join us in our resolve to expedite the MOA with the agencies who are currently confirmed as partners in the study. We are all willing to expand the MOA at a later date if there are additional local sponsors formally admitted to our partnership.

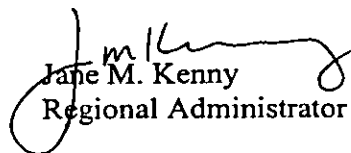
Preservation of Federal and State Statutory Authorities

The following sentences in the draft MOA that we sent to your office on June 24, 2003 served to preserve the statutory authorities of each signatory agency: "Nothing in this agreement will, in any way, alter the specific statutory or regulatory authorities or responsibilities assigned to the Parties. This agreement merely establishes a mechanism of cooperation, coordination, and conflict resolution."

In your October 10, 2003 letter, you requested that additional language be added to the MOA specifically reserving New Jersey's right to pursue any claim against a responsible party for Natural Resource Damages. I believe that the original sentences in the draft MOA, as reproduced above, already address every signatory agency's right to implement its own statutes. Not only is there no need to list a particular New Jersey statute, but the specification of any one statute will necessitate our listing all of the statutes of every signatory agency, so as not to imply that a particular New Jersey statute takes precedence over all other federal and state laws. I acknowledge that Natural Resource Damage issues are very important to NJDEP, but urge you to agree that all federal and state laws are important, so that an over-arching statement preserving every signatory agency's rights to follow its own laws should suffice in this MOA.

I look forward to working with you on the Lower Passaic River Restoration Project. Please call me with any questions at 212-637-5000, or have your staff call George Pavlou, Director of the Emergency and Remedial Response Division, at 212-637-4392.

Sincerely,


Jane M. Kenny
Regional Administrator

cc: Colonel John B. O'Dowd, U.S. Army Corps of Engineers, New York District
Commissioner Jack Lettiere, New Jersey Department of Transportation